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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,215	03/24/2004	Christopher Jude Amies	2002P12618US01	3926
7590 11/14/2008 Elsa Keller, Legal Administrator Siemens Corporation Intellectual Property Department 170 Wood Avenue South Iselin, NJ 08830				
EXAMINER LAMPRECHT, JOEL				
ART UNIT		PAPER NUMBER		
3737				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/808,215

Applicant(s)

AMIES ET AL.

Examiner

JOEL M. LAMPRECHT

Art Unit

3737

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 October 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-32.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 10/8/08
13. ☐ Other: _____.

/BRIAN CASLER/
Supervisory Patent Examiner, Art Unit 3737

Continuation of 11, does NOT place the application in condition for allowance because: The objections to the claims have been overcome by the amendment and therefore should no longer be an issue in the case of an appeal. With regard to Applicant's arguments levied against the 102 rejection and the "logical fallacy" statement which was included in the previous rejection, Examiner offers this further information to assist Applicant in possibly amending their claimed invention to provide the most accurate claim limitations. Applicant has provided two examples where a "factor" does not require the monitoring of a position of interest; however, within the scope of the current claims as worded, the independent claim asserts that "exclusive of the area of interest", and the following dependent claims include "anatomical and physiological variations within said area of interest, a stage of disease, a stage of treatment, imaging the area of interest, laboratory testing of a patient, physiological measurement of a patient, and clinical observation of a patient. Clearly applicant in dependent claim 7, is asserting that imaging of "an area of interest" somehow constitutes "exclusive of an area of interest" as that claim is clearly dependent from claim 1. As Applicant has then given that assertion in the claims, it is up to Examiner to decide what exactly comprises "exclusive of a position of said area of interest". One would assume that imaging an area of interest, would inherently or necessarily include the position of the area of interest, and accordingly Examiner has taken this claimed language into consideration when examining the claims.

Applicant has not responded to the rejection of claim 7 under the art, nor has Applicant argued that Examiner's inclusion of the current reference based on claim 7's inclusion in the claim set. If Applicant wishes to exclude imaging as a method of "monitoring" which is "exclusive of an area of interest", then it would be logical to not include such a claim within their claim set. The same is true to the other analogous claims 17 and the dependent claims therefrom. Accordingly, Examiner disagrees with Applicant's assertions about the claims and their scope and offers that the outstanding rejection is indeed proper given the disclosure and claimed limitations. With regard to the argument that the rejection of record does not anticipate "monitoring", Examiner respectfully submits that while an art rejection was used, even in lieu of an art rejection one could very reasonably argue that physicians are extremely aware of the need to "monitor" or observe a patient in order to make a diagnosis.

The IDS submitted on 10/8/08 does not have a date, and the document itself is "fuzzy" or hard to read. Examiner has performed a similar search on medicinenet.com for an understanding of Applicant's inclusion of this citation, and accordingly believes that the inclusion into the record as pertinent is only cursory or supplementary as it appears to be reference material.

The outstanding amendments do not change the scope of the claims, and are believed to reduce issues for appeal by negating the outstanding objections. Accordingly, they shall be entered into the record. Examiner thanks Applicant for alleviating these issues, even in light of an obvious disagreement of semantics or language with Examiner.